IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/02/2004

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.15561 of 2003

Venkatesan .. Petitioner

-Vs-

1. The State of Tamilnadu
rep. by its Secretary
Department of Home
Fort St.George, Chennai-9.

2. The Dy.Superintendent of Police
Q Branch, CID
Cuddalore, Chengai Range. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issue of a writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.I.Subramaniam
Public Prosecutor

:ORDER

Heard both sides.

2. By proceedings dated 12.5.2003 of the first respondent, the request of the petitioner to transfer the case in C.C.No.9 of 1994 from the file of the Designated Court II, Chennai to regular Sessions Court was rejected. Hence, the petitioner had pr red this writ petition for issue of a writ of Certiorarified Mandamus to call for the record in Letter No:40602/Pol.VII/2003-3, dated 12.5.2003 on the file of the first respondent, to quash the same as illegal, and to direct the first respondent to trans fer the case in C.C.No.9 of 1994 on the file of the Designated Court II, Chennai to regular Sessions Court.

2.1. Mr.R.Sankarasubbu, learned counsel for the petitioner challenges the refusal to transfer the case of the petitioner, viz., C.C.No.9 of 1994 from the file of the Designated Court II, Chennai to regular Sessions Court, on the ground that the peti er is neither a symphathiser of L.T.T.E. nor a supporter of L.T.T.E.

2.2. Mr.R.Sankarasubbu, learned counsel for the petitioner contends that, in any event, the matter should have been reviewed by the Screening Committee or a Review Committee constituted by the Central Government, as per the direction of the Apex Cou n Kartar Singh v. State of Punjab, 1994 (2) LW (Crl.) 422, wherein it is held as follows:

"...179. In order to ensure higher level of scrutiny and applicability of TADA Act, there must be a screening Committee or a Review Committee constituted by the Central Government consisting of the Home Secretary, Law Secretary and other secretaries conc erned of the various Departments to review all the TADA cases instituted by the Central Government as well as to have a quarterly administrative review, reviewing the States' action in the application of the TADA provisions in the respective States, and the incidental questions arising in relation thereto. Similarly, there must be a Screening or Review Committee at the State level constituted by the respective States consisting of the Chief Secretary, Home Secretary, Law Secretary, Director General of P olice (Law and Order) and other officials as the respective Government may think it fit, to review the action of the enforcing authorities under the Act and screen the cases registered under the provisions of the Act and decide the further course of acti on in every matter and so on."

2.3. That apart, Mr.R.Sankarasubbu, learned counsel for the petitioner also contends that the petitioner is in judicial custody for nearly 6 years and the trial could not be completed and as a result, the right to life and liberty conferred under A le 21 of the Constitution of India are violated.

3.1. Per contra, Mr.I.Subramaniam, learned Public Prosecutor appearing for the respondents inviting my attention to the stage of the case in C.C.No.9 of 2004 submits that the trial had commenced from November, 2003 and is in progress.

3.2. With regard to the delay in conducting the trial as alleged by the learned counsel for the petitioner, Mr.I.Subramanian, learned Public Prosecutor submits that the delay, if any, is due to the attempt made by the petitioner to discharge himself m the charges framed in C.C.No.9 of 1994 by moving this court under Article 226 of the Constitution of India for issue of a writ of Habeas Corpus.

3.3. Mr.I.Subramaniam, learned Public Prosecutor inviting my attention to Section 1(4) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (for brevity "the Act") contends that as per Section 1(4) of the Act, the proceeding initiated er the Act should not come to an end without the final conclusion and determination, which have, therefore, to be continued in spite of the expiry of the Act.

4. After careful consideration of the submissions of both sides, I am of the considered opinion that it may not be proper for this Court to go into the contentions made by Mr.R.Sankarasubbu, learned counsel for the petitioner as to whether or not th titioner is a supporter of L.T.T.E. at this stage,

more so, while exercising the power of judicial review conferred under Article 226 of the Constitution of India, as the same would otherwise affect the interest of either parties and that of the trial w hich is under progress.

5. In this context, it is apposite to refer Section 1(4) of the Act, which reads as follows:

"Section 1: Short title, extent, application, commencement, duration and savings:-
(1) to (3) ...
(4) It shall remain in force for a period of eight years from the 24th day of May, 1987, but its expiry under the operation of this sub-section shall not affect:-

(a) the previous operation of, or anything duly done or suffered under this Act or any rule made thereunder o any order made under any such rule, or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under this Act or any rule made thereunder or any order made under any such rule, or

(c) any penalty, forfeiture or punishment incurred in respect of any offence under this Act or any contravention of any rule made under this Act or of any order made under any such rule, or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid."

(emphasis supplied)

6. A reading of section 1(4) of the Act makes it clear that the framers of the Act had desired that even after its expiry, the proceedings initiated under the Act should not come to an end without the final conclusion and determination, which have, efore, to be continued in spite of the expiry of the Act, and therefore, there is indeed no scope for a controversy as to whether any investigation, inquiry, trial in respect of any offence alleged under the Act shall come to an end as sub-section (4) to Section 1 of the Act protects and keeps alive such an investigation and trial.

7. Moreover, the directions of the Apex Court in Kartar Singh v. State of Punjab, referred supra, are to be scrupulously followed in the cases relating to the provisions of the Act. In which event, the Screening Committee or Review Committee const ed pursuant to the above directions of the Apex Court is under an obligation to review even the pending cases periodically.

8. In the aforesaid circumstances, I am inclined to pass the following order:
(i) the criminal trial in C.C.No.9 of 1994, which commenced from November, 2003, shall proceed on day to day basis, without being prejudiced by the

disposal of this writ petition, provided the petitioner cooperates for such expeditious trial, as every d ay delay in conducting the trial would effect the right to life and liberty of the petitioner violating Article 21 of the constitution of India; and

(ii) notwithstanding the progress of the trial in C.C.No.9 of 1994 , the Screening Committee or Review Committee constituted pursuant to the directions of the Apex Court in Kartar Singh v. State of Punjab, referred supra, shall also review the case of the petitioner every quarterly, of course after giving a reasonable opportunity to the counsel for the petitioner.

This writ petition is ordered accordingly. No costs.

Index : Yes
Internet : Yes

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